

### REMARKS

This is a reply to the Supplemental Final Office Action mailed January 27, 2003, with a shortened statutory response period of three (3) months from the mailing date. As this reply is filed before April 27, 2003, it is timely filed. As acknowledged by the Examiner in the Interview Summary, the statutory response period was reset by the Supplemental Final Office Action.

A request for continued examination (RCE) is filed herewith to have the subject Amendment entered, as well as to have the references cited in the Supplemental Information Disclosure Statement submitted herewith considered on the merit. The Commissioner is hereby authorized to charge any additional fees to Deposit Account number 02-1818.

Applicants respectfully request reconsideration and allowance of the pending claims in view of the Amendments and Remarks below.

A. Status of the Application

Claims 1-11, 13-33, and 35-44 are pending.<sup>1</sup> Claims 1, 2, 3, 21, 24 and 25 have been amended. Moreover, Claims 42-44 have been cancelled. The Examiner has maintained the previous rejection of claims 1-2, 13, 16-22, 24, and 38-44 under 35 U.S.C. §103(a) as being unpatentable over *Barney* (US 6,203,535) in view of *Galante* (US 5,272,210), and the rejection of claim 23 under 35 U.S.C. §103(a) in further view of *Occhiello* (EPO 0423499A2). In addition, the Examiner has maintained the rejection of claims 1, 2, 4-8, 13-24, 26-30, and 36-44 under 35 U.S.C. §103(a) as unpatentable over *Barney* in view of *Wilhoit* (US 5,928,740), and the rejection of claims 9-11 and 31-33 and 35 under 35 U.S.C. §103(a) in further view of *Sudo* (EPO 0556034 A1). Applicants traverse these rejections, insofar as they apply to the claims as amended, and request reconsideration of same.

B. Rejections under 35 U.S.C. § 103(a)

At the outset, Applicants wish to clarify statements from the previous Amendment which appear to have been misinterpreted by the Examiner. Applicants did not argue that "the rejection based on the combination of *Barney* and *Galante* was improper because *Galante* teaches using

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<sup>1</sup> Applicants note the Office Action states claims 1-44 as pending. However, claims 12 and 34 were cancelled by the Amendment filed August 20, 2002.

random copolymers of ethylene/propylene in blends while applicants blends use block copolymers.” See OA at 4. The invention as now claimed is clearly directed to include both random copolymers and block copolymers of ethylene/propylene. Indeed, the statement that *Galante* did not “teach the blends of the present invention” was directed to the fact that *Galante* discloses using propylene and ethylene copolymers in combination with lower alkyl acrylates. As is clear from the Amendment filed August 20, 2002, claims 1 and 21 were amended to omit these lower alkyl acrylates.<sup>2</sup> Thus, as previously argued and discussed in more detail below *Galante* clearly fails to disclose or even arguably suggest the claimed blend.

The present invention as set forth in independent Claim 1 is directed to a flowable materials container containing at least two components. The first component is selected from the group consisting of: (1) ethylene and  $\alpha$ -olefin copolymers having a density of less than about 0.915 g/cc, and (2) ionomers. The first component is present in an amount from about 99% to about 55% by weight of the blend. The second component is selected from the group consisting of: (1) propylene containing polymers, (2) polybutene polymers, (3) polymethylpentene polymers, (4) cyclic olefin containing polymers and (5) bridged polycyclic hydrocarbon containing polymers. The second component is present in an amount by weight from about 45% to about 1%. Claim 1 also recites a list of material properties of a film made from the recited blends, including the modulus of elasticity, a sample creep at 120°C under 27 psi loading of less than or equal to 150% for a film having a thickness of from about 5 mils to about 15 mils, and that the film can be heat sealed into a container having seals wherein the seals remain intact when the container is autoclaved at 121°C for one hour.

1. *Barney In View of Galante Does Not Render the Present Invention Obvious*

*Galante* discloses two-component polymeric blends which include propylene-ethylene copolymers and ethylene-alkyl acrylate copolymers. The blends of *Galante* include 60-80% of ethylene-alkyl acrylate, with 20-40% propylene-ethylene copolymers, containing from 1 to 7% ethylene. The alkyl acrylates in *Galante* are described as acrylic esters of linear, branched or

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<sup>2</sup> Applicants acknowledge that an argument was made that *Galante* did not teach block copolymers however this argument was intended only in regards to dependent claims 2, 3, 24 and 25. In view of the present Amendment this argument is now moot.

ethylene-alkyl acrylate, with 20-40% propylene-ethylene copolymers, containing from 1 to 7% ethylene. The alkyl acrylates in *Galante* are described as acrylic esters of linear, branched or cyclic alcohols having 1-28 [carbons], but not limited to, methyl acrylate, ethyl acrylate and butyl acrylate, with methyl acrylate and butyl acrylate being preferred. See col. 2, lines 54-58. As set forth above, Applicants' claimed blend clearly does not include these two components.

As admitted by the Examiner, *Barney* does not teach the polymer blends of the present invention. See Office Action of May 24, 2002 at 4. As discussed above, *Galante* only teaches using propylene and ethylene copolymers with ethylene-alkyl acrylate copolymers. *Galante* is completely devoid of any mention or suggestion of using Applicants' claimed blend. Accordingly, in view of the above, Applicants submit that this rejection of claims 1-2, 13, 16-22, 24, and 38-41 under 35 U.S.C. §103(a) has been overcome.

2. *Barney In View of Galante and Further In View of Occhiello Does Not Render Claim 23 Obvious.*

Claim 23 stands rejected under 35 U.S.C. §103(a) as unpatentable in light of *Barney* in view of *Galante* and further in view of *Occhiello*. Because *Occhiello* fails to remedy the deficiencies of the combination of *Barney* and *Galante*, the Examiner again has failed to present a prima facie case of obviousness. Specifically, *Occhiello* is completely silent as to the presently claimed blends. Accordingly, Applicants submit that claim 23 is allowable over this combination of references.

3. *Barney In View of Wilhoit Does Not Render Claims 1, 2, 4-8, 13-24, 26-30, and 36-41 Obvious.*

Claims 1, 2, 4-8, 13-24, 26-30, and 36-44 stand rejected under 35 U.S.C. §103(a) as unpatentable in light of *Barney* in view of *Wilhoit*. *Wilhoit* discloses polymer blends for fabricating heat shrinkable films. However, *Wilhoit* is clearly using different polymer blends than are claimed in the instant application. The first polymer of *Wilhoit* has a melting point of between 55 to 75°C and comprises an ethylene alpha olefin copolymer, which is preferably produced using a metallocene single-site catalyst. See col. 7, lines 24-39. The second and third polymers disclosed in *Wilhoit* are copolymers of ethylene and at least one alpha olefin, preferably produced using a constrained geometry catalyst, and a copolymer of ethylene and at

unsaturated esters--preferably EVA--having adhesive and/or heat sealing properties. See col. 8, line 63 – col. 9, line 11.

Applicants' claimed blend clearly does not include this combination of polymers. Specifically, a first component which is selected from the group of: (1) ethylene and  $\alpha$ -olefin copolymers having a density of less than about 0.915 g/cc and ionomers, and a second component which is selected from the group of: (1) propylene containing polymers, (2) polybutene polymers, (3) polymethylpentene polymers, (4) cyclic olefin containing polymers and (5) bridged polycyclic hydrocarbon containing polymers. Moreover, contrary to the Examiner's position, the properties set forth in Claims 1 and 22 would not be expected in the films of *Wilhoit*. As is clear from Table 1 of *Wilhoit*, all of the disclosed films manufactured from these polymer blends shrink in a significant amount at 90°C. In contrast, the films of Claim 1 and 22 demonstrate a sample creep at 120°C under 27 psi loading of less than or equal to 150% for a film having a thickness of from about 5 mils to about 15 mils, and the film can be heat sealed into a container having seals wherein the seals remain intact when the container is autoclaved at 121°C for one hour. It is without question the heat shrinkable films manufactured from the blends of *Wilhoit* would not meet these specific claim limitations. Thus, Applicants submit the Examiner has failed to present a prima facie case of obviousness. Accordingly, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

4. *Barney* In View of *Wilhoit* In Further View of *Sudo* Does Not Render Claims 9-11 and 31-33 and 35 Obvious.

Claims 9-11, 31-33, and 35 stand rejected under 35 U.S.C. §103(a) as unpatentable in light of *Barney* in view of *Wilhoit* and further in view of *Sudo*. As set forth above, *Barney* in view of *Wilhoit* does not teach or suggest the present invention. Further, even if the bridged cyclic-olefins disclosed in *Sudo* could be combined with the polymer blends for making heat shrinkable films of *Wilhoit*, these films are completely incapable of meeting any of the above-discussed claim limitations. Accordingly, Applicants submit that this rejection under 35 U.S.C. §103(a) has been overcome and request withdrawal of the same.

5. Supplemental Information Disclosure Statement (Supplemental IDS)

Applicants are also submitting herewith a Supplemental IDS, and respectfully request citation and examination of the references cited in the Supplemental IDS be made in the above-identified patent application. Some of these references were cited in search reports for related PCT applications.

CONCLUSION

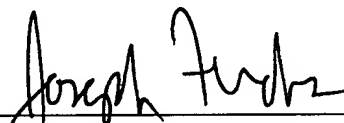
In view of the foregoing amendments and remarks, Applicants submit that all pending claims are in condition for allowance and respectfully request a notice of the same.

Respectfully submitted,

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